



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN

~~WILLIAMSON~~  
ATTORNEY GENERAL

Honorable I. Prdecki  
County Auditor  
Galveston County  
Galveston, Texas

Dear Sir:

Opinion No. 0-2385

Re: whether the provisions of  
Article 3899-b are broad  
enough to permit the County  
Auditor's approval of ex-  
pense accounts to be allowed  
out of the fees of office  
for rental of offices for  
the Justices and Constables.

Your letter of May 18, 1940, requesting the  
opinion of this department on the above stated question  
has been received. We quote from your letter as follows:

"Article 3899-b, Revised Civil Statutes,  
1925, as amended, makes provision for the  
Justices of the Peace to receive books and  
stationery necessary in the performance of  
their duties. This, the County has always  
provided. At this time an expense account  
has been rendered by precinct officials (who  
are on a fee basis in this County) for the  
allowance of an office rental charge. Sec-  
tion 2 of this Article provides suitable  
offices, etc., may in the discretion of the  
Commissioners' Court be furnished to the  
officials named therein but does not provide  
for offices for Justices of the Peace and Con-  
stables.

"Your opinion is respectfully requested  
as to whether the provisions in this Article  
are broad enough to permit my approval of  
expense accounts to be allowed out of the fees

of office for rental of offices for the Justices and Constables."

Section 1 and 2 of Article 3899b read as follows:

"Section 1. There shall be allowed to County Judges, Clerks of the District and County Courts, Sheriffs, County Treasurers, Tax Assessors and Collectors, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the Commissioners Court out of the County Treasury; and suitable offices shall also be provided by the Commissioners Court for said officers at the expense of the county. And such books and stationery as are necessary in the performance of their duties shall also be furnished Justices of the Peace by said Commissioners Court. Provided all purchases herein must be approved by Commissioners Court, and must be made under the provisions of Article 1659, Revised Civil Statutes of Texas, 1925.

"Section 2. Suitable offices and stationery and blanks necessary in the performance of their duties may in the discretion of the Commissioners Court also be furnished to resident District Judges, resident District and County Attorneys, County Superintendents and County Surveyors, and may be paid for an order of the Commissioners Court out of the County Treasury.

Section (a) of Article 3899, Vernon's Annotated Civil Statutes provides that:

"At the close of each month of his tenure of office, each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premium on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expense, and other necessary expense. . . If such expenses be incurred in connection with any particular case, such statement shall name such case. Such

expense account shall be subject to the audit of the county auditor, attorney, otherwise by the Commissioners Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which the collection of such item may be adjudicated in any court of competent jurisdiction. The amount of salary paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies and clerks, shall be paid out of the fees earned by such officer. . ."

Article 3891, Vernon's Annotated Civil Statutes reads in part as follows:

"Each officer named in this chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salary of his assistants and deputies and authorized expenses under Article 3899, and the amount necessary to cover cost of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees and shall be disposed of in the manner hereinafter provided. . ."

The authorized expenses which may be deducted under Article 3899, supra, are such expenses as are enumerated therein, and only those expenses are to be paid from fees earned by the officers.

In view of the foregoing statutes you are respectfully advised that it is the opinion of this department that expenses for office rent for the Justices of the Peace and Constables are not similar to the items of expense provided for by the above mentioned statutes, and

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that the Justices of the Peace and Constables are not entitled to deduct items of expenses incurred by them from fees of their offices that would be otherwise payable to the county. Therefore your question is respectfully answered in the negative.

Trusting that the foregoing satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams  
Assistant

AW: pbp --pam  
APPROVED JUN 1, 1940  
GROVER SELLERS  
FIRST ASSISTANT  
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE  
BY BWB, CHAIRMAN